

**United States Department of Labor
Employees' Compensation Appeals Board**

L.M., Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
North Las Vegas, NV, Employer**

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**Docket No. 10-1896
Issued: April 11, 2011**

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Judge
COLLEEN DUFFY KIKO, Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On July 13, 2010 appellant filed a timely appeal from the February 18 and April 21, 2010 nonmerit decisions of the Office of Workers' Compensation Programs, which denied her requests for reconsideration. Pursuant to the Federal Employees' Compensation Act¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over these nonmerit decisions.²

ISSUE

The issue is whether the Office properly denied appellant's requests for reconsideration, pursuant to section 8123(a).

¹ 5 U.S.C. § 8101 *et seq.*

² Appellant indicated that she wanted an oral argument before the Board. On July 27, 2010 the Clerk of the Board informed her that the Board holds oral arguments only in Washington, DC, and was not responsible for any travel or other expenses incidental to attending. The Board asked appellant to advise whether she still desired oral argument and to inform the Board no later than August 11, 2010. The Board noted that, if no response was received by that date, the Board would decide her appeal on the record. The Board received no response.

FACTUAL HISTORY

On August 29, 2008 appellant, then a 46-year-old supervisor and acting manager, filed an occupational disease claim alleging that her post-traumatic stress disorder and major depressive disorder were a result of unfair and discriminatory tactics by management.³ In a decision dated March 6, 2009, the Office denied her claim on the grounds that the three events accepted as factual⁴ were not compensable in the absence of administrative error or abuse. In decisions dated August 7 and November 12, 2009, it denied reconsideration of its March 6, 2009 decision.

On November 20, 2009 appellant again requested reconsideration “based on new medical documentation that your office has never received,” as well as some documentation previously submitted but not noted in the Office’s prior decision. She added that the Office failed to note research documentation in its prior decision. Appellant offered what she described as a clear and concise statement of the work-related events that caused her to file her claim for compensation. She stated that all of her medical documentation would explain her condition and the dates she started treatment. Appellant submitted documents relating to the approval of her disability retirement application, Internet research on various psychological and psychosomatic disorders, and a number of medical reports.

In a decision dated February 18, 2010, the Office denied appellant’s request for reconsideration. It found that the request failed to meet any of the standards for reopening her case for a merit review of her case.

On February 23, 2010 appellant requested reconsideration “based on new factual evidence from the claimant.” She revisited the background of her case, in more detail than her previous request.

In a decision dated April 21, 2010, the Office again denied appellant’s request. It found that her allegations were duplicative and repetitive of evidence previously submitted and did not constitute relevant and pertinent new evidence.

On appeal, appellant argues the Office erred in considering a traumatic event on August 25, 2008 under an occupational disease claim. She noted other ways in which the Office handled her claim. Appellant submitted a substantial number of documents.

³ She filed similar claims in 2008 and 2009.

⁴ (1) The claimant did not receive a promotion for positions for which she applied. She filed an Equal Employment Opportunity (EEO) complaint of discrimination. (2) Office-in-Charge (OIC) Wilson wanted to change the claimant’s starting time from 7:00 a.m. to 8:00 a.m. to have her present when the carriers returned to the station. (3) OIC Wilson would make decisions for the claimant and her staff.

LEGAL PRECEDENT

The Office may review an award for or against payment of compensation at any time on its own motion or upon application.⁵ The employee shall exercise this right through a request to the district Office.⁶

An employee (or representative) seeking reconsideration should send the request for reconsideration to the address as instructed by the Office in the final decision. The request for reconsideration, including all supporting documents, must be in writing and must set forth arguments and contain evidence that either: (1) shows that the Office erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by the Office; or (3) constitutes relevant and pertinent new evidence not previously considered by the Office.⁷

A request for reconsideration must be sent within one year of the date of the Office decision for which review is sought.⁸ A timely request for reconsideration may be granted if the Office determines that the employee has presented evidence or argument that meets at least one of these standards. If reconsideration is granted, the case is reopened and the case is reviewed on its merits. Where the request is timely but fails to meet at least one of these standards, the Office will deny the request for reconsideration without reopening the case for a review on the merits.⁹

ANALYSIS

The Board has no jurisdiction to review the Office's March 6, 2009 decision denying appellant's claim for compensation. Appellant did not file a timely appeal from that decision, so the Board may not review the merits of her case. The Board may not review whether appellant sustained an emotional condition in the performance of duty, as she claims.

The only decisions the Board may review are the Office's February 18 and April 12, 2010 nonmerit decisions denying appellant's requests for reconsideration. The only issue before the Board, therefore, is whether the Office properly denied those requests. The Board will determine whether appellant's requests for reconsideration met at least one of the three standards for obtaining a merit review of her case.

In her November 20, 2009 and February 23, 2010 requests for reconsideration, appellant did not show that the Office erroneously applied or interpreted a specific point of law. In other words, she did not identify a specific statute, regulations, procedure or case and did not show how the Office erroneously interpreted it or applied it in denying her claim.

⁵ 5 U.S.C. § 8128(a).

⁶ 20 C.F.R. § 10.605.

⁷ *Id.* at § 10.606.

⁸ *Id.* at § 10.607(a).

⁹ *Id.* at § 10.608.

Appellant did not advance a relevant legal argument not previously considered by the Office. She argued generally that her illnesses and injuries occurred in the performance of duty. The Office well considered this argument when it adjudicated appellant's case on March 6, 2009.

Appellant did not submit relevant and pertinent new evidence not previously considered by the Office. To support her requests for reconsideration, she took care to restate the events at work that caused her to claim compensation benefits. Evidence that repeats or duplicates evidence already in the record has no evidentiary value and constitutes no basis for reopening a case.¹⁰ The reason the Office denied appellant's claim was that she failed to establish a compensable factor of employment. Most of her allegations were disputed by management and could not be accepted as factual based on all the evidence submitted. Merely repeating these allegations or redescribing what happened on particular dates or rephrasing what effect these incidents had on her mental and physical state does not constitute "new evidence not previously considered by the Office."

Appellant also supported her requests for reconsideration with medical reports and Internet research, but none of that evidence is relevant and pertinent to the denial of her claim. If the factual evidence fails to establish a single work incident for which compensation may be paid, it does not matter if a physician believes that work caused a psychological or physical injury. Before the medical opinion evidence can become relevant to her claim, appellant must first establish that an incident occurred at work and that the incident falls within the scope of workers' compensation. Because the Office found that she failed to establish a compensable incident at work, the medical reports and Internet research she submitted are not relevant and pertinent.

Because appellant's requests for reconsideration failed to show that the Office erroneously applied or interpreted a specific point of law, failed to advance a relevant legal argument not previously considered by the Office, and failed to provide relevant and pertinent new evidence not previously considered by the Office, the Board finds that the Office properly denied a reopening of her case for a merit review of her case. The Board will affirm the Office's February 18 and April 21, 2010 decisions.

Appellant argues on appeal that the Office erred in considering a traumatic event on August 25, 2008 under an occupational disease claim. This is a technical objection as to form. As to substance, the March 6, 2009 merit decision shows that the Office acknowledged appellant's allegation of what happened on August 25, 2008, noted OIC Wilson's response to the allegation and found that the allegation was not established as factual. So regardless of whether she considers the incident to be traumatic, an isolated incident as opposed to part of a pattern of intimidation and harassment, the Office adjudicated the particular matter, made findings with reasons and provided appellant with appeal rights.

Appellant objected to the way the Office administered her claim but did not show that the Office committed a procedural error that would warrant remanding the case for further action. She also submitted a substantial number of documents, but the Board's jurisdiction is limited to

¹⁰ *Eugene F. Butler*, 36 ECAB 393 (1984); *Bruce E. Martin*, 35 ECAB 1090 (1984).

reviewing the evidence that was before the Office at the time of its final decision.¹¹ So to the extent that appellant submitted new evidence on appeal, the Board has no jurisdiction to review that evidence. To the extent that she submitted evidence that was before the Office at the time it issued its February 18 and April 21, 2010 nonmerit decisions, the Board has reviewed the evidence relevant to this appeal.

CONCLUSION

The Board finds that the Office properly denied appellant's requests for reconsideration. The requests did not meet at least one of the three standards for obtaining a merit review of her case.

ORDER

IT IS HEREBY ORDERED THAT the April 21 and February 18, 2010 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 11, 2011
Washington, DC

Alec J. Koromilas, Judge
Employees' Compensation Appeals Board

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board

¹¹ 20 C.F.R. § 501.2(c)(1).